Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 16 MAY 5, 1982 No. 18

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 82-79)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 15, 1982.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
American Container Transport Co., Inc., 7350 W. Marginal Wy, SW, Seattle, WA; motor Carrier; Allied Fidelity Ins. Co. (PB 2/5/80) D 2/12/82 [1]	Feb. 4, 1982	Feb. 12, 1982	Seattle, WA $25,000
B & B Trucking, Inc., 83 Egleston Rd., Westfield, MA; motor carrier; Hartford Casualty Ins. Co.	Feb. 16, 1982	Mar. 24, 1982	Boston, MA $25,000
Bailey's Express Inc., 2423 Kenilworth Ave., Tuxedo, MD; motor carrier; Royal Ins. Co. of America	Jan. 20, 1982	Mar. 23, 1982	Washington, DC $25,000
Carthage Freight Line, Inc., P.O. Box 101028, 1185 Omohundro Dr., Nashville, TN; motor carrier; Liberty Mutual Ins. Co.	Mar. 16, 1982	Mar. 29, 1982	New Orleans, LA $25,000
Gordon O. Cellum, dba: Cellum & Son Brokerage, 721 N. Cage, P.O.B. 887, Pharr, TX; motor carrier; Fidelity & Deposit Co. of MD D 3/22/82	Mar. 1, 1980	Mar. 13, 1980	Laredo, TX $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Mae Weir, dba: Chuck's Cartage Co., 4928 S. 2nd St., Milwaukee, WI; motor carrier; Ohio Casualty Ins. Co. (The)	Mar. 11, 1982	Mar. 11, 1982	Milwaukee, WI $25,000
Coble Express, Inc., P.O. Box 1104, Fesslers Lane, Nashville, TN; motor carrier; American Ins. Co.	Mar. 5, 1982	Mar. 8, 1982	New Orleans, LA $25,000
Direct Delivery Service, Inc., P.O. Box 91160, Los Angeles, CA; motor carrier; Ohio Casualty Ins. Co. (The)	Feb. 18, 1982	Mar. 9, 1982	Los Angeles, CA $25,000
D. Donnelly, Inc., 855 Montee de Liesse, St. Laurent, P.Q., Canada; motor carrier; Transamerica Ins. Co. (PB 11/3/77) D 3/12/82 [2]	Dec. 9, 1981	Mar. 12, 1982	Ogdensburg, NY $25,000
Lawrence Evers, P.O.B. 176, Darby, MT; motor carrier; Washington International Ins. Co.	Jan. 22, 1982	Mar. 25, 1982	Great Falls, MT $25,000
Gulf Central Warehouse Center, Inc., 5605 S. Westshore Blvd., Tampa, FL; motor carrier; Lumbermens Mutual Casualty Co. (PB 3/23/79) D 3/23/82 [3]	Mar. 23, 1982	Mar. 23, 1982	Tampa, FL $25,000
H.T.L., Inc., 3800 Commerce Ave., P.O.B. 192, Fairfield, AL; motor carrier; Fidelity & Deposit Co. of MD	Mar. 23, 1982	Mar. 24, 1982	Mobile, AL $50,000
William Hayes, P.O.B. 610, Lebanon, TN; motor carrier; Liberty Mutual Ins. Co. D 3/25/82	Sept. 20, 1979	Oct. 3, 1979	New Orleans, LA $25,000
Intercity Transportation Co., Inc., Easton, MA; motor carrier; Fidelity & Deposit Co. of MD D 3/25/82	Jan. 17, 1977	Feb. 15, 1977	Boston, MA $50,000
KHS Air Freight, Inc., 255 N. 28th St., Battle Creek, MI; motor carrier; Old Republic Ins. Co. (PB 4/1/77) D 4/1/82 [4]	Apr. 1, 1982	Apr. 1, 1982	Detroit, MI $50,000
F. Landon Cartage Co., 1030 W. Monroe St., Chicago, Ill.; motor carrier; Continental Ins. Co. D 3/18/82	Dec. 2, 1971	Jan. 24, 1972	Chicago, IL $35,000
MASA Transportation, Inc., 9715 Carnegie, El Paso, TX; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 10, 1982	Mar. 11, 1982	El Paso, TX $25,000
North American Van Lines Canada Ltd., 1150 Champlain Ave., Whitby, Ontario, Canada; motor carrier; Royal Ins. Co. of America (PB 4/16/76)D 3/25/82 [5]	Dec. 28, 1981	Mar. 25, 1982	Buffalo, NY $25,000
Prime, Inc., R.R. 1, Box 1158, Urbana, MO; motor carrier; Old Republic Ins. Co. (PB 3/21/80) D 3/21/82 [6]	Mar. 21, 1982	Mar. 21, 1982	Detroit, MI $50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Regional Storage & Transport, Inc., P.O.B. 817, Greensville, NC; motor carrier; U.S. Fidelity & Guaranty Co.	Mar. 8, 1982	Mar. 11, 1982	Wilmington, NC $25,000
Routair Transport Ltd., Montreal International Airport, Dorval, Quebec, Canada; motor carrier; St. Paul Fire & Marine Ins. Co.	Mar. 2, 1982	Mar. 12, 1982	St. Albans, VT $25,000
Smith's General Trucking Co., Inc., 14 Clyde St., West Warwick, RI; motor carrier; Western Surety Co.	Oct. 5, 1981	Mar. 18, 1982	Providence, RI $25,000
South End Cartage Corp. of DE, 4222 S. Knox Ave., Chicago, Ill.; motor carrier; Northwestern National Ins. Co. of Milwaukee, WI (PB 10/30/81) D 2/23/82 [7]	Jan. 19, 1982	Feb. 23, 1982	Chicago, IL $35,000
Steinbecker Bros., Inc., 1985 2nd Ave., Greeley, CO; motor carrier; Allied Fidelity Ins. Co.	Feb. 15, 1982	Mar. 16, 1982	El Paso, TX $25,000
Super Motor Lines, Inc., P.O. Box 6553 Greensboro, NC; motor carrier; Ohio Casualty Ins. Co. (The) (PB 2/22/78d) D 3/23/82 [8]	Mar. 10, 1982	Mar. 24, 1982	Wilmington, NC $50,000
Viking Freight System, Inc., 3405 Victor St., Santa Clara, CA; motor carrier; Fireman's Fund Ins. Co.	Dec. 3, 1982	Mar. 18, 1982	San Francisco, CA $25,000
Weicker Transfer & Storage Co., P.O.B 5207, Terminal Annex, Denver, CO; motor carrier; Ohio Casualty Ins. Co. (The)	Feb. 4, 1982	Mar. 16, 1982	El Paso, TX $25,000
Williamson Transportation Inc., 130 Lenox Ave., Stamford, CT; motor carrier; St. Paul Fire & Marine Ins. Co. D 4/1/82	Oct. 29, 1980	Oct. 31, 1980	Bridgeport, CT $50,000
Wisconsin Air Cargo Cartage, Inc., P.O. Box 388, South Milwaukee, WI; motor carrier; Fidelity & Deposit Co. of MD	Mar. 10, 1982	Mar. 16, 1982	Milwaukee, WI $25,000

[1] Principal is American Container Transport Co.; Surety is Cotton Belt Ins. Co.
[2] Principal is D. Donnelly Ltd.
[3] Surety is Safeco Ins. Co. of America
[4] Surety is St. Paul Fire & Marine Ins. Co.
[5] Surety is the Travelers Indemnity Co.
[6] Surety is St. Paul Fire & Marine Ins. Co.
[7] Surety is The Home Indemnity Co.
[8] Surety is United States Fire Ins. Co.

BON-3-03

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 82–80)

Customs Approved Public Gauger

Approval of public gauger performing gauging under standards and procedures required by Customs.

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Grover Morgan Loss Control and Inspections, Inc., 5115 Coventry Court, Friendswood, Texas 77546, to gauge imported petroleum and petroleum products in all Customs districts, in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: April 20, 1982.

A. PIAZZA
(For Donald W. Lewis, Director,
Entry Procedures and Penalties Division).

[Published in the Federal Register, Apr. 26, 1982 (47 FR 17895)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 19, 1982.

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the Customs Bulletin.

JOHN P. SIMPSON,
Director,
Office of Regulations and Rulings.

(C.S.D. 82-61)

Entry: Registration of Commercial Items

Date: May 14, 1981
File: BAG-5-08 CO:R:E:E
716040 M

This ruling concerns the registration of commercial items.

Issue: Should the guidelines for registering foreign-made tourist items set forth in Manual Supplement 3314-01 dated April 10, 1979, be applied to the registration of commercial articles?

Facts: A District Director of Customs notes that at his port of entry many commercial importers are exporting and returning: (1) articles, such as jewelry, wearing apparel, and small antique articles, sent abroad for repair or alterations pursuant to section 10.8, Customs Regulations, of (2) articles, such as jewelry, and wearing apparel, taken abroad as commercial traveler's samples pursuant to section 10.68, Customs Regulations.

Pursuant to the above-mentioned Customs Regulations, his district requires that such articles must be registered with Customs on Customs Form 4455 Certificate of Registration, prior to their exportation. The original copy is retained by the port of exportation, and a duplicate copy is presented by the importer with the article to Customs at time of return.

This district director notes that some of these commercial importers believe that this registration requirement is too restrictive and that the guidelines for registering noncommercial items set

forth in Manual Supplement 3314–01 dated April 10, 1979, should be extended to apply to the registration of commercial items as well.

Law and analysis: Manual Supplement 3314–01 dated April 10, 1979, provided that for foreign-made tourist items Customs officers should register only those items having serial numbers, or distinctive, permanently affixed markings uniquely distinguishing those items from similar ones. This Supplement points out that this would obviously preclude the registration of most jewelry and virtually all clothings. Photographs of items without serial numbers or other uniquely identifiable markings should not be attached to Customs Form 4457 Certificate of Registration for personal effects taken abroad as an alternative registration procedure. Such a procedure would not preclude a traveler from importing an item similar to the photographed item and claiming that the imported item had been registered. Persons with such documents as receipts, jewelry appraisals, or insurance papers specifically describing their foreign-made items should be advised that those documents in themselves should suffice to expedite the clearance of items on their return to the United States.

As pointed out above, section 10.8 of the Customs Regulations, requires that articles sent abroad for repair or alterations must be registered on Customs Form 4455 prior to the exportation of such merchandise. The original copy of Customs Form 4455 is filed with Customs at the port of exportation and a duplicate is filed with Customs by the importer at the port where such articles are returned. A similar requirement is set forth in section 10.68 Customs Regulations, for commercial travelers' samples or tools of trade. Section 10.8(a) provides that photographs or other means of identification shall be furnished to Customs when deemed necessary by the Customs officer. Although not specifically stated in section 10.68, Customs Regulations, this requirement of photographs or other means of identification when deemed necessary by Customs has been applied to commercial samples and tools of trade.

Tourists are generally not as familiar with the Customs laws and regulations as are commercial importers. In addition, tourists generally take out smaller quantities of jewelry, clothing, and other such items because they are taking out such items for their own personal use while abroad. Commercial importers are generally familiar with the Customs requirements and generally take out their items in larger quantities. In many instances, the manner in which the commercial items are being exported and returned would make them distinctive. Recognizing the differences between commercial and noncommercial importations, it was felt desirable to limit the registration of foreign-made tourist items and to allow the Customs officer at the port of entry maximum discretion in determining whether such articles were taken aboard. However, because commercial items are often taken out in larger quantities and because

commercial importers are generally more familiar with Customs requirements, we believe that such registration is desirable for commercial importations.

Furthermore, recognizing the differences behind registering non-commercial items as opposed to commercial items, Customs has two separate forms for registration. Customs Form 4457 is used for registering personal or tourist items, while Customs Form 4455 is generally used for commercial items.

In fact, we have had complaints from commercial importers regarding the misapplication by Customs at various ports of entry of Manual Supplement 3314-01 dated April 10, 1979, by Customs refusal on the basis of this Manual Supplement to permit commercial importers to register their articles on Customs Form 4455 prior to exportation of such articles. For example, see ORR Ruling 714339 BM.

Holding: The restrictive guidelines for registering foreign-made tourist items set forth in Manual Supplement 3314-01 dated April 10, 1979, do not apply to the registration of commercial items.

(C.S.D. 82-62)

Classification: Vulcanized Nylon/Leather Jogging Shoe

Date: September 3, 1981
File: CLA-2-7:S:C:D6:61-551
801240

In a letter dated August 14, 1981 on behalf of (Corporation name) you inquired as to the dutiable status of a vulcanized nylon/leather jogger produced in Korea.

Our laboratory reports that 55% of the exterior surface area of the upper of the childs' size 10, Pattern No. ECS-290, supplied is covered by leather, 35.7% by rubber (part of the foxing tape and the overlap of the sole), and 9.3% by nylon.

On this basis, this sample of Pattern No. ECS-290 is classifiable under the provision for footwear which has uppers of which more than 50% of the exterior surface area is covered by leather and which are not in chief value of fibers; which is not in chief value of wood; and which is not disposable, in item 700.95, Tariff Schedules of the United States, and dutiable at the rate of 12.5 percent, assuming the shoe is in chief value of rubber and/or plastic.

If the shoe is in chief value of leather, it will be classified in item 700.45, TSUS, and dutiable at the rate of 10 percent since it will *not* be commonly worn only by men, boys and youths.

This ruling is being issued under the provisions of Section 177.1(a)(1) of the Customs Regulations (19 CFR 177.1(a)(1)).

(C.S.D. 82-63)

Drawback: The Substitution of Domestic Palm Kernel Oil for Foreign Palm Kernel Oil Is Not Allowed Under the Same Condition Drawback Law

Date: October 27, 1981
File: DRA-1-CO:R:CD:D
213607 R

Issue: Whether the same condition drawback law permits substitution of domestic goods for foreign goods?

Facts: Palm kernel oil of Canadian origin is mixed with palm kernel oil of domestic origin in one tank in the United States. The importer, who owns all the oil, proposed to substitute and export an equivalent weight of palm kernel oil for the amount of Canadian palm kernel oil imported into the United States. On exportation, the importer proposes to claim drawback under 19 U.S.C. 1313(j).

Law and analysis: Unlike 19 U.S.C. 1313(b) there is no provision in 19 U.S.C. 1313(j) that allows substitution of domestic merchandise for imported merchandise. Same condition drawback (19 U.S.C. 1313(j)) was designed to allow exporters to receive drawback in those instances in which the *merchandise imported* was not used and the exporters were unable to anticipate the need to export. H. Rpt. 1109, 96th Cong. 17 (1980). (emphasis added). It is clear both from the statute itself and the legislative history, Congress intended to limit the benefits of drawback under 19 U.S.C. 1313(j) to the merchandise that was actually imported rather than to substituted domestic merchandise. The Customs Service has so ruled to that effect. C.S.D. 81-210.

Holding: Substitution of domestic foreign palm oil is not allowed under the same condition drawback law (19 U.S.C. 1313(j)).

Possible alternative: The Customs Service has allowed a drawback claimant to identify lots of fungible (commercially identical) merchandise by use of the first-in, first-out (FIFO) accounting method. C.S.D. 81-203. Thus, if 1,000 gallons of Canadian oil were placed into a tank followed by the addition of 4,000 gallons of domestic oil, the first 1,000 gallons removed would be considered to be the Canadian oil. If only 500 gallons were first removed, the tank would be considered to have 500 gallons of Canadian oil and 4,000 gallons of domestic oil. If the second 500 gallons were removed and used in the United States, none of the remaining 4,000 gallons could be used under same condition drawback since those 4,000 gallons are considered to be of domestic origin.

(C.S.D. 82-64)

Temporary Importation Under Bond: Articles Imported for Use in Connection With Experiments or for Study Are Entitled to Temporary Admission Free of Duty Under Bond Under Item 864.30, TSUS

Date: November 10, 1981
File: CON-9-CO:R:CD:D
213280 L

Issue: Item 864.30, Tariff Schedules of the United States (TSUS), provides for the temporary admission free of duty under bond of articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blueprints, photographs, and similar articles for use in connection with experiments or for study. The issue is raised as to whether the wording " * * * and similar articles for use in connection with experiments or for study" is intended to include rather than exclude articles and instruments used to conduct and complete studies or reviews.

Facts: A domestic company intends to import various automobile engines and miscellaneous parts to determine the following:

1. Packing and packaging adequacy.
2. Oxidation rates (rusting) on metal parts.
3. Effect railroad transport has with regard to cargo shifting and other movement.
4. General seaworthiness of parts.

The parts will be packed in 40 foot containers, both on pallets and break bulk. Each packaged item will be photographed before and after packing is removed. Oxidation tests will be performed on metal parts. Other parts will be tested for abrasion, damage, and other effects caused by marine and inland transport. All results will be duly recorded and submitted to the foreign shipper for study and review.

The inquirer suggests that it appears that the word "similar", as used in this item description, means similar in utility rather than in physical properties. While it is realized that the imported articles are not being directly tested, it is submitted that they are the visual instruments necessary to the evaluation and analysis in the study and are "similar" in use as photographs or specifications may be in such studies.

Law and Analysis: With respect to item 864.30, TSUS, the Customs Service has held for many years that it is only necessary that the imported article be used in connection with the test, experiment, or review. What is controlling is whether there is a legitimate test, experiment, or review of the imported articles within the meaning of the law.

In 1949, the Customs Service was asked if a record changer shipped from abroad for the purpose of developing proper packing and packaging for it could be admitted free of duty under section

308(4) of the Tariff Act of 1930 (the predecessor of item 864.30, TSUS) as an article imported for experimental purposes. The Customs Service, after requesting and receiving information as to the nature of the experiment, and noting that after the proper box and interiors have been developed it may be found advisable to make certain tests to determine whether the packing will provide the protection required, concluded in a letter dated December 9, 1949 (516.23) that the article was properly entitled to entry under bond under section 308(4) as articles for experimental purposes.

Subsequently, section 308(4) was amended from "articles intended solely for experimental purposes" to read "articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blueprints, photographs, and similar articles for use in connection with experiments or for study * * *".

In the instant case, while the engines and parts are not being imported to test their adaptability or suitability for a specific use or uses, they are being imported in connection with a legitimate test and are the subject of an experiment (i.e. the effect of transportation under various conditions) and of review and study.

It should be noted that any use of the engine or parts which is not incidental to the testing and evaluation program would constitute a violation of the bond resulting in an assessment of liquidated damages.

The facts submitted indicate that engines and miscellaneous parts will be imported for study and evaluation of the effects of shipping. There is no mention of instruments although the issue, as framed, asks whether the wording of item 864.30, TSUS, is intended to include rather than exclude articles and instruments used to conduct and complete studies or reviews. If the instruments are imported to be tested, experimented with, or reviewed, they would be admissible under item 864.30, TSUS. However, if, for example, a stress gauge was included in a shipment of engines and parts for the purpose of measuring stress experienced by those engines and parts in the course of transportation, the gauge would not be eligible for admission under item 864.30, TSUS. In such an instance, the gauge, an instrument of known qualities, is not the subject of a legitimate test, experiment, or review, nor is it being used as a raw material to test the performance of the imported articles.

Holding: Articles imported for use in connection with experiments or for study are entitled to temporary admission free of duty under bond under item 864.30, TSUS.

(C.S.D. 82-65)

Copyright: No Infringement of Midway's Audio Visual GALAXIAN Game Found When Comparison Is Made With Epoch's GALAXY II Table-Top Electronic Game

Date: December 18, 1981
File: CPR-3 CO:R:E:E
718150 SO

GENTLEMEN: This is in response to your letters of November 13, 19, December 3, and 7, 1981, on behalf of Epoch Company, Ltd., requesting an advisory ruling concerning whether or not the importation of its table-top electronic game known as GALAXY II would infringe the copyright of Midway Manufacturing Company for its coin-operated audio visual arcade game GALAXIAN. Midway has recorded its copyright registration for GALAXIAN with Customs for import protection. Several shipments of the GALAXY II games consigned to retail customers of Epoch in the United States have been detained by the Customs Service in Philadelphia and San Francisco as suspected infringing copies of GALAXIAN, and the status of future shipments being contemplated is in doubt. You submitted a lengthy brief covering all aspects of the law and facts that bear on the issue of whether or not the table-top game in question infringes the Midway copyright. In addition you submitted an actual sample of the GALAXY II game and asked that the requested advisory ruling be issued as soon as possible.

We understand that GALAXY II was created independently in 1980 by Mr. K. Yamazaki of the Epoch design department in a joint effort with Nipon Electric Company, Ltd., a major and well known Japanese electronics manufacturer. Affidavits submitted by the developers of GALAXY II attest to the independence of the effort, both in the formulation of the concept for the game and the putting together of the actual hardware necessary to bring that concept to fruition. We understand that you were recently advised by the U.S. Copyright Office that they have approved Epoch's copyright application for the audio-visual work associated with its GALAXY II electronic game. This is said to be further evidence of the copyrightable subject matter in Epoch's audio-visual work.

The substantial similarity test applicable to the decision at hand is set forth in the decision of the United States District Court for the District of Maryland of Nov. 27, 1981, in the case of *Atari, Inc. v. Amusement World, Inc., et al.*, Civil No. Y-81-803, quoting from *Novelty Textile Mills, Inc. v. Joan Fabrics Corp.*, 558 F.2d 1090, 1093 (2d Cir. 1977):

> "Substantial similarity" is to be determined by the "ordinary observer" test. Judge Learned Hand in defining this test stated there is substantial similarity where "the ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same."

> *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960). More recently this court formulated the test as "whether the average lay observer would recognize the alleged copy as having been appropriated from the copyright work." *Ideal Toy Corp. v. Fab-Lu Ltd.*, 360 F.2d 1021, 1022 (2d Cir. 1966).

The *Atari* decision referred to above and another memorandum opinion and order dated June 2, 1981, in the case of *Midway Mfg. Co. v. Artic International, Inc.*, C.A. No. 80 C 5863, now pending in the U.S. District Court for the Northern District of Illinois, hold that the idea of a video game is not subject to copyright protection. For example, the plaintiff (Midway Mfg. Co.), with regard to their GALAXIAN game, cannot copyright the idea of setting aliens in outerspace and having them swoop down on a flagship, nor could the plaintiff (Atari), with regard to their electronic video space game ASTEROIDS, gain copyright protection for the idea of commanding a ship through a barrage of space rocks and enemy space ships.

The expression of concepts in Epoch's GALAXY II game which flows directly from ideas such as those referred to in the court cases cited above have been held by the courts to be a "scene a faire," and in the public domain. Similarities in the forms of expression between GALAXY II and GALAXIAN are inevitable because they are part of the idea which is not subject to copyright protection. Similarities so accounted for do not constitute copyright infringement.

The attorney for Epoch in his brief and in the affidavits submitted in support thereof has supplied a long list of features which are compared with features of the GALAXIAN game and found to be dissimilar. We have had the opportunity to play samples units of both of the games and note that the table-top battery operated Epoch game has a unique audio-visual expression and appeal which, in our opinion, is *not* substantially similar to Midway's video game, GALAXIAN. The differences most obviously lie in the distinct appearance of the space characters, the combinations of sounds and visual displays on the completely dark background, and the four different sequential game phase patterns of the characters during play. Without considering the unavoidable similarities in expression which are not protected by copyright because they are part of Midway's idea, we are of the opinion that the ordinary player would regard the aesthetic appeal of these two games as quite different. This difference, combined with the strong evidence submitted by the attorney for Epoch regarding the independent development of the GALAXY II game, now covered by its own copyright registration, leads us to conclude that there is no copyright infringement in this case.

Section 602(a) of the Copyright Law (17 U.S.C. 602(a)) provides that importation into the United States, without authority of the

owner of copyright under this title, of copies of works acquired outside the United States is an infringement of the copyright. In view of our conclusion that copyright infringement is not present in this case, the regulations which provide for the detention of suspected infringing copies (19 CFR 133.43) and destruction of forfeited merchandise found to be in violation of the copyright laws (19 CFR 133.52(b)) should not be applied to shipments of Epoch's GALAXY II game currently under detention or future shipments. We are recommending that Customs officers in the field release shipments currently under detention to the consignees. Unlimited numbers of Epoch's GALAXY II table-top electronic game may be imported by anyone without restriction.

A copy of this decision is being circulated to all Customs field offices for their guidance.

(C.S.D. 82-66)

Subject: Vessels: Duty Assessed on the Cost of Foreign Repairs to a Barge

Date: December 21, 1981
File: VES-13-18-CO:R:CD:C
105412 JM

To: Regional Commissioner of Customs, Houston, Texas 77002.
From: Director, Office of Regulations and Rulings.
Subject: (Company Name), Barge No. 3, Vessel Repair Entry 100006 dated March 5, 1970.

A memorandum dated November 6, 1981, from the Director, Classification and Value Division, Houston Region, requested a ruling on a supplemental petition filed by counsel for (Company Name) for relief from duty under 19 U.S.C. 1466 on the cost of foreign repairs to the barge. The supplemental petition is an appeal from a decision of December 27, 1979, by the Acting Director, Carriers, Drawback and Bonds Division, on a petition dated March 3, 1977, as amended on June 23, 1978, (which was an appeal from your decision of February 2, 1977) and which you forwarded to Headquarters on September 28, 1979.

The amended petition refers to an application for relief dated April 23, 1970. That application was denied by Headquarters' decision of August 12, 1970, and the District Director, Port Arthur, so notified the applicant by letter dated August 27, 1970. At the request of the applicant and since the required invoices were the subject of litigation in Australia, repeated extensions of time for the submission of the invoices were granted by Headquarters. The invoices were submitted with an application dated September 28, 1972, which you denied on February 2, 1977.

It is noted that your letter of April 9, 1981, notifying the petitioner of the Headquarters' decision of December 27, 1979, did not state

the reasons given for the denial of the various claims made by the petitioner. We believe the petitioner is entitled to that information. Therefore, in this decision we will again consider each claim in full and your notification of this decision to the petitioner should state the reasons we denied each claim.

The petitioner states and the record indicates that the barge is a non-self-propelled, all welded steel barge; that it is equipped with anchors and anchor hoists for holding position in offshore waters, a large stationary revolving crane and other miscellaneous equipment used to install offshore platforms; and that the vessel has living quarters for eighty men. The barge, under United States registry, was towed from New Orleans to Port Welshpool, Victoria, Australia, during the period of September 1967 to December 1967. From December 15, 1967, until November 13, 1969, the barge was employed in the installation of offshore structures. On November 17, 1969, the barge proceeded to Brisbane, Australia for repair. Repairs to the barge were made between November 17, 1969 and December 26, 1969, after which the vessel returned to the United States under tow and arrived at Orange, Texas, on March 5, 1970. Vessel Repair Entry 10006 was filed at Orange on March 5, 1970.

Title 19, United States Code, Section 1466, provides in pertinent part for payment of an ad valorem duty of 50 percent on the cost of foreign repairs to a vessel documented under the laws of the United States to engage in the foreign and coasting trade. Section 1466 also provides that the Secretary of the Treasury is authorized to remit or refund such duties if the owner or master furnishes good and sufficient evidence that the vessel was compelled, by stress of weather or other casualty, to put into such foreign port and make the repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

The following claims are made in the petition:

> (1) The barge is a special purpose vessel that carried neither passengers nor cargo for hire and, as such, is not subject to 19 U.S.C. 1466.
>
> (2) Levy and collection of the foreign repair duty is time barred under 19 U.S.C. 1621 or 28 U.S.C. 2562
>
> (3) All or most of the foreign repairs were necessary to make the vessel seaworthy after it had been damaged by stress of weather and for this reason are exempt from the foreign repair duty.

We will discuss the petitioner's claims in the order shown above.

1. Petitioner's claim that the vessel is a special purpose vessel that carried neither passengers nor cargo for hire and thus not subject to 19 U.S.C. 1466 is based on the decisions in *Corpus Co.* v. *United States,* 1972, 350 F. Supp. 1397, 69 Cust. Ct. 170, C.D. 4390, and *Standard Dredging Company* v. *United States,* 69 Tres. Dec. 239, T.D. 48135 (Cust. Ct. 1936). In T.D. 76-238, Customs limited the holding of the Court in C.D. 4390 to the specific entries before the

Court. In *Standard,* the barge was a dredge while the vessel in the present case is a derrick barge.

By the enactment of Public Law 91-654 (effective on January 5, 1971 after arrival of the barge in the United States), Congress provided that duty under 19 U.S.C. 1466 on foreign repairs to a vessel "designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade" which arrives in the United States two years or more after its last departure from the United States, shall apply only to the foreign repairs made during the first six months of the vessel's voyage. (See 19 U.S.C. 1466(e), formerly 19 U.S.C. 1466(c)). Prior to the effective date of this limiting provision, Customs consistently held that such vessels were subject to duty under 19 U.S.C. 1466 to the same extent as foreign repairs to any other vessel covered by the statute.

The U.S. Court of International Trade recently ruled on the applicability of 46 U.S.C. 1466 to a barge which was purchased for use as a crane platform, issued a registry by the U.S. Coast Guard, towed to Canada for repairs, and assessed with duty on the foreign repairs upon return to the United States. *Elizabeth River Terminals, Inc.* v. *United States,* C.I.T. Slip Op. 81-17 (February 26, 1981). In view of the fact that the barge in the *Elizabeth River Terminals* case arrived in the United States after January 5, 1971, effective date of the special service vessel provision contained in 19 U.S.C. 1466(e), the Court found it unnecessary to comment specifically on cases such as *Corpus* decided prior to January 5, 1971, in reaching its decision. However, the Court ruled that the barge, which had not been out of the country for at least two years, was a vessel subject to the duties imposed by 19 U.S.C. 1466(a). In reaching its decision the court stated in part:

> It cannot be denied the court must interpret a statute in a manner that will carry out or effectuate the congressional intent. *United States* v. *Gulf Oil Corp.,* 47 CCPA 32, 35, C.A.D. 725 (1959). In ascertaining congressional intent, the court may refer to the legislative history of a statutory enactment and need not limit its inquiry to a mere reading of the words of the statute. *United States* v. *American Trucking Ass'ns,* 310 U.S. 534, 543-544, 60 S. Ct. 1059, 1063-1064 (1940). *See Train* v. *Colorado,* 426, U.S. 1, 9-10, 96 S. Ct. 1938, 1942 (1976). Clearly statutes are to be read in pari materia, and all subsections must be read in order to clean the legislative intent and animating purpose.
>
> Subsection (a) of 19 U.S.C. 1466 provides for the assessment of duties upon repairs made in foreign ports to vessels documented under the laws of the United States to engage, or intended to be employed, in the foreign or coasting trade. Subsection (e) provides, in material part, that for vessels designed and primarily used for purposes other than transporting passengers or property in the foreign or coasting trade, the duties imposed by section 1466(a) shall only apply to certain materials and repairs made within 6 months after departure from the United

371-922 O - 82 - 3

States, and when the vessels have not been in a U.S. port for 2 years or more. It is clear that subsection (a) provides for the assessment of duties, and subsection (e) provides for a limited exemption from the assessment under certain specific conditions.

The enactment of subsection (e) in 1971 was intended to relieve certain vessels from the duties imposed in subsection (a).

* * * * * * *

From the statutory language, as well as the legislative history, it is plain that Congress intended to exempt from duties only those foreign repairs made on special service vessels, such as barges, which meet the conditions set forth in 19 U.S.C. 1466(e). Clearly, Congress entertained no doubt that barges are vessels within the meaning of the statute. Indeed, in the "Explanation of Committee Amendment," barges are expressly mentioned as illustrations or examples of special service vessels.

In providing for the exemption, Congress manifested its understanding and intent that the special service vessels were subject to the duties imposed by section 1466(a); otherwise, there would have been no reason to amend section 466 of the Tariff Act of 1930 by including the exemption found in the present subsection (e).

* * * * * * *

It cannot be questioned that by virtue of its certificate of registry the *Cambria* was a vessel documented under the laws of the United States to engage in the foreign or coasting trade. As a seagoing barge, it was issued a certificate of registry and was required to be inspected by the Coast Guard. It is also significant that as a documented vessel it enjoyed the protection of the laws of the United States.

To accept plaintiff's interpretation of section 1466 would mean that, in 1971, by enacting subsection (e), Congress enacted a subsection which, for special service vessels, either repeated or contradicted subsection (a) since, according to plaintiff's reading of the statue, special service vessels like the *Cambria* were not and are not subject to the duties provided for in subsection (a). Such a meaning would do violence to the basic principle of statutory interpretation and application that a court should give effect to all provisions of a statute. It cannot adopt a meaning which would render a section or subdivision of a statute a mere redundancy. *See Jereski* v. *G. D. Searle & Co.*, 367 U.S. 303, 307–308, 81 S. Ct. 1579, 1582 (1961). Moreover, as stated by the U.S. Court of Customs and Patent Appeals, in construing different parts of a tariff act which appear to be in conflict it is the court's function to harmonize them so as to give each of them meaning, and achieve a result which was reasonably within the legislature's contemplation. *Beaver Products Co., Inc.* v. *United States*, 17 CCPA 434, T.D. 43878 (1930); accord, *United States* v. *Corning Glass Works*, 66 CCPA 25, C.A.D. 1216, 586 F. 2d, 822 (1978); see also *Weinberger* v.

Hynson, Westcott & Dunning, 412 U.S. 609, 631, 93 S. Ct. 2469, 2484 (1973). By interpreting 19 U.S.C. 1466 (a) and (e) so that special service vessels are subject to the duties provided for in subsection (a) unless they meet the specific conditions set forth in subsection (e), the court is implementing the stated congressional intent, and also avoids any conflict between the two subsections of the statute.

In the *Elizabeth River Terminal* decision, the Court ruled that 19 U.S.C. 1466(a) covered a barge "documented under the laws of the United States to engage in the foreign or coasting trade" even though the barge was prohibited by its Coast Guard certificate of inspection from carrying cargo and was not intended to transport passengers. The language in 19 U.S.C. 1466(a) concerning the vessels covered by the repair statute did not change between March 5, 1970, the date of arrival in the United States of the barge belonging to (Name) and the date of arrival in the United States of the *CAMBRIA,* the barge which was the subject of the *Elizabeth River Terminal* decision. Accordingly, the interpretation of 19 U.S.C. 1466(a) in the *Elizabeth River Terminal* decision is applicable in the subject case and the foreign repairs to the barge are subject to duty under 19 U.S.C. 1466.

(2) Collection of the duty on the foreign repairs to the vessel is not barred by either 28 U.S.C. 2462 or 19 U.S.C. 1621 which impose a time limitation on suits or actions to collect civil fines, penalties or forfeiture. In the subject case, Customs is attempting to collect only the duty imposed by statute, not the forfeiture of the vessel or a monetary amount provided for violations of the statute. Accordingly, the time constraints imposed by 19 U.S.C. 1621 and 28 U.S.C. 2462 do not apply.

(3) At the time of petitioner's September 28, 1972, letter requesting relief from duty, section 4.14(f), Customs Regulations, outlined the required evidence to support a claim for relief based on "stress of weather or other casualty." Among those requirements was a certificate of the master of the vessel setting out the nature of the casualty, when and where the casualty occurred, the damage done by the casualty, the port where the repairs where made, and a statement as to whether or not the repairs were required to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination. Section 4.14 has been revised and the requirement for supporting evidence is contained in section 4.14(d)(iii) which allows the certification to be made by "the master or other responsible vessel officer with personal knowledge of the facts." The certificate of (Name), Secretary of (Name) previously submitted, and the statement of (Name), Barge Superintendent, filed with the petition for review, which were submitted in lieu of the master's certificate, show neither when and where a particular casualty occurred nor the damage done by a casualty. These certificates

make only broad general statements concerning working conditions, the weather and the cause of damage to the barge.

In support of the claim that the foreign repairs were made necessary due to stress or weather, petitioner has furnished copies of the barge's log from March 4, 1968, through November 17, 1979 (some dates not covered); American Bureau of Shipping (ABS) survey reports; U.S. Salvage Association recommendations; repair specifications based on ABS recommendations; ABS Certification of Seaworthiness; and invoices covering the repairs in addition to the certificates mentioned in the preceding paragraph.

While the vessel's log indicates that there were heavy seas in the Bass Straits where the vessel was working, the file contains insufficient evidence to show that the repairs made in Brisbane were necessitated by stress of weather or other casualty rather than ordinary wear and tear or other causes. To the contrary, ABS survey report No. SY838 dated December 28, 1969, shows that a portion of the repairs made in Brisbane covered items which appeared on an ABS Report No. NO 22878, dated September 20, 1967, prior to the barge's departure from the United States. For example, work covered by items 5(a)(b) and (c) on Report No. NO 22878, which the New Orleans Surveyor recommended "be carried out on voyage to Australia or prior to commencement of location work in Australia," was completed in Melborne, in November and December 1969, Survey report No. SY838 shows that the remaining repairs to the Barge in November and December 1969, concerned items reported on Melborne Report Nos. MLB 69–27, dated April 5, 1969, and MLB 69–75, dated August 31, 1969. In addition, (Name) interoffice memorandum dated January 9, 1970, commenting on damage discovered on March 31, 1969, states in part, "In the process of investigating this damage and making repairs, it was found that the void immediately outboard of this space was flooded and it was quite apparent by the sea growth in the void, that this condition existed for some time." We note that the barge's log furnished with the petition does not cover the events which happened on March 31, 1969.

In CIE 957/60, we held that it is insufficient to establish that repairs were necessary to secure the safety and seaworthiness of the vessel as it must also be shown that the repairs were necessitated by stress of weather or other casualty. We made similar rulings in CIE 1347/48, CIE 21/60 and CIE 37/60.

As noted in your memorandum, we have previously held, in CIE 1262/60, that relief under the vessel repair statute "is not warranted where repairs are deferred for a considerable period after inclement weather or other casualty occurs, and the vessel, nevertheless, remains in trade, in an unrepaired condition, as such repairs are not necessary to secure the safety and seaworthiness of the vessel."

We are of the opinion that the petitioner has not presented good and sufficient evidence that the vessel was compelled by stress of weather or other casualty, while in the regular course of her voyage, to put into a foreign port to effect repairs. Accordingly, the duty is not remitted.

We agree with your proposed liquidation holding the foreign repairs to be dutiable with the exception of certain itemized charges, i.e., crane hire, cartage, addition of a forward storm anchor storage rack, cartage and "fares, meals, extras," which are not dutiable under 19 U.S.C. 1466. As discussed in a telephone conversation with the liquidator handling this matter, the amounts reflecting costs of repairs should be handled in a consistent manner. Either all amounts should be rounded to the nearest dollar or the exact amounts shown on the invoices should be used.

Your file is being returned under separate cover.

(C.S.D. 82-67)

Subject: Drawback: Common Cotton Terry Towels Transformed Into Refresher Towels Constitutes a Manufacturer or a Production Under the Drawback Law

Date: December 22, 1981
File: DRA-1-09-CO:R:CD:D
213542 B

Issue: Does the process whereby towels are changed to Oshiburi refresher towels as described below constitute a manufacture or production for purposes of the manufacturing drawback law?

Facts: A corporation has applied for drawback on sanitized cotton terry cloth towels used by airlines in international traffic as disposable refreshers for their passengers. The applicant wishes to designate unsanitized and unprocessed cotton terry cloth towels imported in bulk, 1200 to 2400 per case.

After random weighing and inspection, the towels are brought from the warehouse to the production area where the cases are slit and the towels distributed in bundles of 100 towels to the workers on the conveyor line.

The towels are inspected for defects, thread configuration, discoloration, singeing, infestation and other defects. Towels not discarded as unacceptable at this point are deinfested and trimmed of loose threads. The towels are then folded and rolled to an attractive configuration according to airline's specifications. After rolling, the towels are pressed into aluminum trays, the number per tray depending on each customer's order.

Next the towels are sprayed to saturation with a patented fragrant chemical containing perfume and two germicide/santizing agents, other chemcials, and water. This spray renders the towels fit for passenger use as Oshiburi towels, in that it not only renders

them fragrant and germ-free, it allows them to be heated without burning or becoming heat-discolored. The towels on the trays are then wrapped airtight in clear polyethylene film after labels containing instructions for use are placed on the trays. The heat shrunk wrapping preserves the fragrance and sanitation of the towels.

The cost of the foregoing operations approximates one sixth of the value of the finished product. The question which must be answered is whether the entire operation, particularly the sanitizing aspect, has transformed the imported towels into new and different articles fit for a new use.

Law and analysis: "Manufacture or production" is defined in terms of rendering something fit for a particular use for which it was not suitable prior to the operations performed. *United States v. International Paint Co.* 35 CCPA 87, C.A.D. 76 (1948).

Early on, the Supreme Court laid down a somewhat narrow definition of "manufacture" for Customs purposes:

> Manufacture implies a change, but every change is not a manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary as set forth in *Hantranft* v. *Wiegman* (121 U.S. 609) (1887)). There must be a transformation; a new and different article must emerge, having a different name, character, or use. *Anheuser-Busch Brewing Association* v. *United States,* 207 U.S. 556 (1907).

Aside from the restrictive view of "manufacture," it is apparent the Court felt a manufacture was more than "treatment, labor, and manipulation." (See also *Roland Freres, Inc.* v. *United States,* 67 Treas. Dec. 973, R.D. 47763 (1938)). In discussing a fabric-shrinking process, the Court of Customs and Patent Appeals noted:

> A thing may be manufactured in one tariff sense but not in another tariff sense. Congress did not intend to permit drawback even though goods might in one sense be said to have gone through a manufacturing process if there is not great transformation or change in the article. *Howard Hardy & Co., Inc.* v. *United States,* T.D. 48441, 71 Treas. Dec. 810, at 813 (1937) (See also *Ishimitsu* v. *United States, 7 CCPA 186, T.D. 38963, C.A.D. 645 (1921)).*

Following *Hardy, supra,* and *Frank Textile Corporation* v. *United States,* T.D. 48562, 70 Treas. Dec. 398 (1936), which also involved shrink-proofing, we held in C.I.E. 1086/62 of October 11, 1962, that a sanitization process applied to textile fabric to be made into undergarments was not a manufacture or production. We noted at that time the process was lost after several washings of the fabric.

Notwithstanding, in many later cases the courts held that if an operation renders a commodity or article fit for use which it was otherwise not fit, the operation falls within the "letter and spirit" of "manufacture." *International Paint Co., supra.* That court noted

the requirements of change of name, character, or use in the definition (of manufacture) are stated in the disjunctive (35 CCPA, at 93).

The decision in *International Paint* is not contra *Anheuser Bush, supra,* or *Ishimitsu, supra,* which was cited by the court in *International Paint.* The latter decision appears to support Customs more recent interpretation of "manufacture" as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers, and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

In application of this principle we held in C.S.D. 80–183 that the sterilization and filling with antibiotics of unsterilized imported glass vials, thereby transforming them into injectables ready for use with hypedermic syringes, constitutes a manufacture or production. Likewise, in C.S.D. 79–339 we held that the sorting, cleaning, in some cases splitting, and bagging of peas, rendering them fit for consumption, was a manufacture or production. Finally, following C.S.D. 80–183, *supra,* in an unpublished opinion of September 23, 1981 (213530) we held that the sterilization and wrapping in paper pouches of material to produce disposable laparotomy sponges for hospital use, constitutes a manufacture or production.

In the instant case, although the towels are not sterilized, the total operation transforms them into articles fit for a particular use for which prior to the operation they were unsuited. The plain, untrimmed, and unsanitized towels are transformed into Oshiburi refresher towels, according to specifications set by the producers and its customers, the airlines.

We believe the total operation performed falls within the letter and spirit of "manufacture or production." See *International Paint Co., supra.*

Holding: The total operation described whereby common cotton terry cloth towels are transformed into Oshiburi refresher towels, constitutes a manufacture or production under the drawback law.

Effects on other rulings: This ruling is limited to the facts. Therefore, C.I.E. 1086/62 is not affected.

(C.S.D. 82-68)

Subject: Vessels: Application of Tonnage Tax to and Entry of Korean-Flag Vessels

Date: December 28, 1981
File: VES-11-CO:R:CD:C
105360 PH

To: Assistant Area Director (Audit), U.S. Customs Service, Houston Texas.

From: Director, Carriers, Drawback and Bonds Division.

Subject: Application of Tonnage Tax to and Entry of Korean-Flag Vessels.

In your memorandum of September 29, 1981, you request clarification of section 4.22, Customs Regulations, and Customs procedures for entering Korean-flag vessels. You state that you have been informed that North Korean-flag vessels are not permitted to enter United States ports except for innocent passage. You also state that Customs is accepting declarations of "Korea" as the flag or nationality of vessels so registered. You note that the list of nations, the vessels of which are exempted from the payment of special tonnage tax and light money in section 4.22, includes "Korea." You ask whether (1) Customs should require a specific declaration of North or South Korea from the masters of Korean-flag vessels, and (2) the Korea listed in section 4.22 includes both North and South Korea.

We are of the opinion that a specific declaration by the masters of Korean-flag vessel that the vessel is North or South Korean is unnecessary. We are of this opinion because the master of each foreign vessel is required to exhibit the vessel's document to Customs on or before the entry of the vessel (section 4.9(c), Customs Regulations) and the information on that document (port of registry and title of official signing the document) should show whether the vessel is a North or South Korean-flag vessel. We have obtained a sample of a Republic of Korea provisional certificate with a sample English translation and are sending you copies of these documents for your information.

Your second question is whether "Korea," as used in section 4.22, includes both North and South Korea. Presidential Proclamation No. 2992 (17 F.R. 9159, October 16, 1952), upon which T.D. 53129 adding Korea to the list of nations in section 4.22 is based, suspended from discriminating duties of tonnage and impost in the United States "vessels of Korea." Other privileges, such as most-favored-nation or General Systems of Preferences treatment, extended to "Korea" are specifically not extended to that part of Korea under Communist domination or control. (See General Headnote 3(c) and (e), Tariff Schedules of the United States; see also 22 U.S.C. 2370(f) and Executive Order No. 11071, 27 F.R. 12875, December 27, 1962, at note following 26 U.S.C.A. 955.) In addition, the United States

does not recognize North Korea (see p. 29, *Digest of United States Practice in International Law,* 1975, copy attached). Accordingly, we conclude that the "Korea" listed in section 4.22 includes the Republic of Korea or South Korea, but does not include the Democratic People's Republic of Korea or North Korea.

In your memorandum you state that you have been informed that Noth Korean-flag vessels are not permitted to enter United States ports except for innocent passage. We have been informed by the Department of State that North Korean-flag vessels are only permitted to enter United States ports due to "force majeure." According to the Supreme Court of California in *Pacific Vegetable Corp.* v. *C.S.T., Ltd.,* 174 P. 2d 441, 447 (1946), force majeure, or the Latin expression "vis major," is not necessarily limited to the equivalent of an act of God. According to that Court, the test for a force majeure is ". . . whether under the particular circumstances there was such an insuperable interference occuring without the party's intervention as could not have been prevented by the exercise of prudence, diligence and care." (See also, *National Carbon Co.* v. *Banker's Mortgage Co.,* 77 F. 2d 614, 617 (C.C.A., 10th Cir., 1935); *Bouvier's Law Dictionary,* p. 1255 "Force Majeure," and pp. 3403-3404 "Vis Major;" and *Words and Phrases, "Force Majeure.")*

(C.S.D. 82-69)

Computed Value: Dutiable Status of Certain General Expenses Under the Trade Agreements Act of 1979 Paid by the U.S. Parent Company (TAA #44)

Date: January 12, 1982
File: CLA-2 CO:R:CV:V
542658 TLL
TAA #44

To: District Director of Customs, El Paso, Texas 79985.
From: Director, Classification and Value Division.
Subject: Dutiability of Certain General Expenses Under the Trade Agreements Act of 1979 Paid by the U.S. Parent Co.; IA 169/81.

This is in reply to your memorandum dated September 4, 1981 concerning this subject matter. The file was received in Headquarters on November 5, 1981.

While the submitted file indicates two different cases are involved in your inquiry, the issues are essentially the same.

Computed Value is the basis of appraisement in both cases, and the involved expenses, paid for by the parent company in the United States, do not fit the definition of an assist. In both cases, these expenses are not carried on the assemblers' books as a general expense, although, in the one case, the accounting expense is booked in Mexico by a subsidiary. As far as you can determine,

these expenses were not purposely shifted to either parent company to avoid paying duties.

Basically, your position is that the law directs us to use the producer's profit and general expenses under computed value, provided these figures are consistent with the profit and general expenses usually reflected by producers in the country of exportation in sales of merchandise of the same class or kind. You continue that building depreciation expense, rent expense, and accounting expenses are normally reflected on the books of the Mexican assemblers involved in the 807.00 program. For this reason, you find the general expenses of these two companies inconsistent with the usual profit and general expenses of other assemblers. Therefore, you propose an adjustment to the general expenses of these two companies to include rent, depreciation, and accounting expenses paid by the parent.

In reviewing the submitted file, we are unable to determine why transaction value does not apply. If consistent with TAA No. 25, dated May 13, 1981, transaction value is found, the merchandise must be appraised on the basis of transaction value.

The question of how certain expenses which are incurred by an offshore subsidiary and are paid by and maintained on the books of the U.S. company are to be treated under section 402, of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), is not only a fundamental question but is central to the changes made by the TAA.

Under section 402(e)(1) of the TAA, computed value is defined as the sum of:

> (A) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;
>
> (B) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;
>
> (C) Any assist, if its value is not included under subparagraph (A) or (B); and
>
> (D) The packing cost.

The term "assist," has been defined in section 402(h)(1)(A) of the TAA in the following manner:

(1)(A) The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for exportation to the United States of the merchandise:

> (i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

Thus, it seems clear that the items set forth in your inquiry, that is, plant rental, plant depreciation and accounting services cannot be treated as "assists" under section 402(e)(1). This was so held in the case of accounting services in TAA No. 4. This concept was expanded in TAA No. 9, when we stated, "items which were formerly treated as dutiable assists but which are not to be treated as assists under 402(h)(1)(A), will not be added in as part of computed value, as long as such treatment is in accordance with the relevant generally accepted accounting principles."

With this background, we do not see how accounting services carried on a parent's books can be treated as either general expenses or costs of fabrication of the producer under computed value. Therefore, such costs or expenses would not be dutiable.

Insofar as plant rental and building depreciation are concerned, it seems to us that the portion of these two items which relate to the assembly (or manufacturing) operation is inherently a cost of fabrication. Therefore, it is our position that the prorated portion of these two items is properly a part of the cost of fabrication of the imported merchandise, unless the importer (or producer) is able to demonstrate otherwise under the generally accepted accounting principles of the country of production.

The question of whether the producer's profit and general expenses are consistent with the profit and general expenses usually reflected by producers in the country of exportation in sales of merchandise of the same class or kind is, of course, a question of fact which will vary depending on the particular point in issue. Our authority for rejecting figures relating to the producer's general expenses is clearly limited under section 402(e)(2)(B) of the TAA to those situations where such figures "are inconsistent with those usually reflected in *sales* of merchandise of the same class or kind (emphasis added) * * *." However, it may be entirely possible that certain expenses that heretofore may have been considered general expenses under previous law would still be treated as being dutiable under 402(e)(1)(B) if "usually reflected, * * *" etc. For example, that portion of plant rental relating to the selling of merchandise of the same class or kind for exportation to the United States may properly be treated as being dutiable as "an amount" for profit and general expense if included in the producer's profit and general expenses, or if not in the producer's figures, may be so included only if we have evidence that such figures "are inconsistent

with those usually reflected * * *" Absent such situations, no authority exists for including these items in computed value.

(C.S.D. 82-70)

Vessels: Relief From Duties Assessed Under 19 U.S.C. 1466 for Repairs Performed on a Vessel in a Foreign Shipyard

Date: January 18, 1982
File: VES-13-18-CO:R:CD:C
105453 LLB

This ruling concerns an application filed pursuant to section 4.14(d) of the Customs Regulations, seeking relief from duties assessed under title 19, United States Code, section 1466 for repairs performed on the subject vessel in a foreign shipyard.

Issue: Whether duty assessed for vessel repairs necessitated by two separate incidents occurring some 18 months apart, is remissible.

Facts: On October 11, 1976, the subject vessel, while on passage from Trinidad to the United States, ran aground at a point known as Darien Rock Shoal. The vessel was surveyed internally for damage at Houston, Texas, during the month of October 1976, and a report of inspection was issued. The vessel was again examined for possible damage resulting from the grounding incident, this time in drydock at Singapore. The report of survey made during this drydock period was dated April 4, 1978. It is noted that neither of the previously mentioned reports is included in the record before us.

On April 20, 1978, the vessel, which was at anchor, was struck by a foreign-flag merchant vessel which had apparently lost power. The vessel was again surveyed for damage and the need for extensive repair was noted. The vessel was placed in drydock and repairs were effected on the combined damage resulting from both the grounding in October 1976 and the April 1978 collision.

Law and analysis: Title 19, United States Code, section 1466, provides in pertinent part for payment of an ad valorem duty of 50 percent on the cost of foreign repairs to a vessel documented under the laws of the United States to engage in foreign or coastwise trade. Section 1466(d)(1) provides that the Secretary of the Treasury is authorized to remit, or refund such duties if the owner or master of the vessel provides good and sufficient evidence that the vessel was compelled by stress of weather or other casualty to put into such foreign port to make repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

The term "casualty", as it is used in the statute, has been interpreted as something which, like stress of weather, comes with unexpected force or violence, such as from a fire, explosion, or collision. (See *Dollar Steamship Lines, Inc.* v. *United States,* 5 Cust. Ct.

23, 28–29, C.D. 362 (1940).) The accompanying record in this case supports a finding of such a casualty for the damage resulting from the collision of April 20, 1978.

A different result obtains, however, when the claim for relief from duty for the repairs necessitated by the grounding incident is considered. We have interpreted section 1466(d)(1) to provide relief from duty only for damage occurring during the same voyage as the repairs, and our position in this regard has been found to be proper (see *Suwannee Steamship Company* v. *United States*, 79 Cust. Ct. 19, C.D. 4708 (1977)). As related earlier, the grounding occurred some 18 months prior to the repairs. Further, any repairs required to make the vessel seaworthy or to insure its safety could have been performed at Houston where the vessel was inspected shortly after it ran aground.

Holding: In light of the foregoing, we find that the application for remission should be granted only for the portion of the duty which is attributable to the collision occurring April 20, 1978. Remission of the duty on repairs attributable to the earlier grounding incident is denied.

U.S. Customs Service

General Notice

Customs Form 7533: Invitation to the Public To Comment

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Invitation to the public to comment.

SUMMARY: This document gives notice that Customs is inviting comments from interested members of the public concerning Customs proposal to eliminate Customs Form 7533 (Inward Cargo Manifest For Vessel Under Five Tons, Ferry, Train, Car, Vehicle, Etc.) and develop a new standardized form to be used servicewide. Presently there are about 200 versions of Customs Form 7533 in use by various carriers. This has presented problems for exporters who wish to computerize their operations. The development of a standardized form will eliminate these problems and facilitate entry of merchandise arriving from contiguous countries.

DATES: Comments (preferably in triplicate) must be received on or before June 21, 1982.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Patricia Anson, Cargo Processing Division, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5354).

SUPPLEMENTARY INFORMATION:

Background

Section 123.3, Customs Regulations (19 CFR 123.3), requires that baggage or other merchandise carried on a vehicle or on a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico be listed on a manifest as prescribed by section 123.4, Customs Regulations (19 CFR 123.4). With certain exceptions, section 123.4 provides that the inward foreign manifest required by section 123.3 for a vehicle or vessel of less than 5 net tons arriving in the United States from Canada or Mexico otherwise than by sea with baggage or merchandise, shall be on Customs Form 7533.

For many years Customs has permitted individual carriers to develop their own format of Customs Form 7533 recognizing that each mode of transportation has specific documentation requirements. As a result, there are about 200 versions of this form in use so that two shipments from the same exporter to the same importer but shipped by different carriers generally would not be on the same documents. This has presented problems for exporters who wish to computerize their operations, as well as for Customs in processing these entries. Accordingly, Customs is considering eliminating the Customs Form 7533 and developing a new standardized form to be used in its place. To ensure that a new form meets the special needs of each type of carrier, can be easily computerized, and yet cause the least disruption to industry, Customs would welcome public comments.

COMMENTS INVITED

No format has been designed for the proposed form. Public comment is invited on its suggested content and format, and the effect of the elimination of the present form. Consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this notice was Jesse V. Vitello, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 13, 1982.

WILLIAM VON RAAB,
Commissioner of Customs

[Published in the Federal Register, Apr. 21, 1982 (47 FR 17072)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the Customs Bulletin, through October 15, 1981 are available in microfiche format at a cost of $39.15 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: April 20, 1982.

B. JAMES FRITZ,
Director, Regulations Control
and Disclosure Law Division.

Date of decision	Number	Issue
03-05-82	065360	Classification: a plastic egg carton with one dozen plastic egg-shaped objects is classifiable as a toy and not a puzzle (735.20, 737.95, 774.55)
03-23-82	069080	Classification: application of American selling price basis of valuation to ladies "Kung Fu" shoes with plastic soles (700.60)
03-23-82	069158	Classification: oil seals, valves, and nozzles (680.14, 681.39)
03-23-82	069229	Classification: galvanized eye bolts with nuts (646.54, 657.25)
03-23-82	069291	Classification: aircraft pilot training materials: printed pilot training text book, cassette tapes with holders, set of hole-punched pages and plastic binder (270.25, 274.75, 657.25, 724.40, 724.45, 774.55)
03-23-82	069313	Classification: steel columns used to support the reactor vessel in the System 80 Nuclear Steam Supply System (NSSS) (653.00, 660.10)
03-23-82	069663	Classification: children's imitation fleece lined vinyl boots (700.56, 700.58, 700.60)
04-01-82	105513	Vessels: use of a foreign-flag service vessel to clean and inspect vessels in United States territorial waters would not violate the laws administered by the U.S. Customs Service
03-30-82	105577	Vessels: application of the third proviso, 46 U.S.C. 883 to a planned route from the United States, through Canada, to Alaska in which variant modes of carriage are used.
03-11-82	718487	Country of Origin Marking: marking requirements, pursuant to 19 U.S.C. 1304(a)(3)(d), for toilet soap

Decisions of the United States Court of Customs and Patent Appeals

GENENDER WHOLESALE *v.* THE UNITED STATES

1. CLASSIFICATION—WATCH CASES—ITEM 720.24

The judgment of the United States Court of International Trade sustaining the classification of watch cases under item 720.24, Tariff Schedules of the United States (TSUS) and refusing classification under item 720.28, TSUS, is affirmed.

F. 2d

GENENDER WHOLESALE, APPELLANT *v.* THE UNITED STATES, APPELLEE

No. 81-27

United States Court of Customs and Patent Appeals, April 15, 1982, Appeal from United States Court of International Trade.

[Affirmed]

Steven P. Sonnenberg and *Paul S. Anderson*, of Chicago, Ill., attorneys for appellant.

J. Paul McGrath, Asst. Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, *Deborah E. Rand*, of New York City, attorneys for appellee.

[Oral argument on April 5, 1982 by *Steven P. Sonnenberg* for appellant and *Deborah E. Rand* for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

Markey, *Chief Judge*.

[1] Genender Wholesale (Genender) appeals from the judgment of the United States Court of International Trade, 1 CIT ——, 520 F. Supp. 278 (1981), sustaining the classification of watch cases under

item 720.24, Tariff Schedules of the United States (TSUS) and refusing classification under item 720.28, TSUS.[1] We affirm.

OPINION

We agree with the decision of the Court of International Trade that the yellow colored watch cases "contain" gold within the meaning of item 720.24. Accordingly, we *affirm* the judgment appealed from and adopt the opinion of the Court of International Trade as our own, except for references therein to the cost of plating as affecting the conclusion of commercial significance.

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[1] Those provisions provide in pertinent part:

Watch cases and parts thereof:

* * * * * * *

Not wholly and not almost wholly of gold or platinum or of both gold and platinum:

Wholly or in part of silver; or containing gold or platinum; or set, or prepared to be set, with precious or semiprecious stones or with imitation gemstones:

720.24		Cases	20 cents each +15% ad val.
	Other:		
720.28		Cases	5 cents each +10% ad val.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, *April 12, 1982.*

The following abstracts of decisions of the U.S. Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/203	Watson, J. April 8, 1982	Durst Manufacturing Co., Inc.	R58/14416	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Galvanized unions
R82/204	Watson, J. April 8, 1982	Empire Findings Co., Inc.	R62/5162, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Thermometers
R82/205	Watson, J. April 8, 1982	Gunze New York Inc.	R58/7712, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Silk piece goods
R82/206	Watson, J. April 8, 1982	Gunze New York Inc.	R59/19385, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Silk piece goods
R82/207	Watson, J. April 8, 1982	Imported Rug Associates, Ltd.	R63/8001, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R82/208	Watson, J. April 8, 1982	Kanematsu New York Inc.	R60/3391, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Sewing machine heads
R82/209	Watson, J. April 8, 1982	Winter Wolff & Co., Inc.	R62/14683, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Pipe fittings

Rehearing Motion Filed

April 2, 1982

Industrial Fasteners Group, American Importers Association *v.* United States et al., Court No. 80-7-01157.—Judgment.—Slip Op. 82-14. Motion by plaintiff.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, APRIL 21, 1982

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

[332-73]

Notice of Release for Public Comment of Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

AGENCY: United States International Trade Commission.

ACTION: Release for public comment, pursuant to Commission investigation No. 332-73, under the authority of section 332 (g) of the Tariff Act of 1930, as amended, of drafts of Explanatory Notes to the following chapters of the Harmonized Commodity Description and Coding System (Harmonized System) as provisionally adopted by the Harmonized System Committee and the Nomenclature Committee of the Customs Cooperation Council.

Volume 3

Chapter 15: Animal and vegetable fats and oils and their cleavage products; animal and vegetable waxes.
Chapter 20: Preparations of vegetables, fruit, nuts, or other parts of plants.
Chapter 21: Miscellaneous edible preparations.
Chapter 22: Beverages, spirits and vinegar.

Volume 4

Chapter 25: Salt; sulphur; earth and stone; plastering materials; lime and cement.

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes.
Chapter 30: Pharmaceutical products.
Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes".
Chapter 45: Cork and articles of cork.
Chapter 47: Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard.
Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans.

Volume 5

Chapter 50: Silk.
Chapter 51: Wool, fine or coarse animal hair, horsehair yarn and woven fabric.
Chapter 52: Cotton.
Chapter 53: Other vegetable textile fibers; paper yarn and woven fabrics of paper yarn.
Chapter 54: Man-made filaments.

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by filing them with the Secretary of the Commission at his office in Washington, D.C. no later than the close of business on April 30, 1982.

COPIES OF DOCUMENTS: Copies of Explanatory Notes which are the subject of this notice are available for public inspection at the offices of the Commission, 701 E Street, NW., Washington, D.C. 20436. The Secretary will also send copies to interested parties upon request.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, or Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, Telephone: (202) 523-0370 or 0362.

SUPPLEMENTARY INFORMATION: In its public notices of February 8, 1980 (45 F.R. 9828 of February 13, 1980), March 21, 1980 (45 F.R. 19696 of March 26, 1980), August 15, 1980 (45 F.R. 55549 of August 20, 1980), June 24, 1981 (46 F.R. 34439 of July 11, 1981), the Commission identified the 97 chapters of the Harmonized System for which texts had been provisionally adopted by the Harmonized System and Nomenclature Committees of the Customs Cooperation Council. Views and comments of interested parties with respect to the nomenclature structure formulated in the 97 chapters were sought by those notices.

This notice is being issued pursuant to Commission investigation No. 332-73, instituted on January 31, 1975 (40 F.R. 6329), under section 332(g) of the Tariff Act of 1930. The public notice of July 17,

371-922 O - 82 - 2

1981 (46 F.R. 37824) set forth the basis for the Commission's investigation in order to participate in technical work on, and described the structure and development of, the Harmonized System.

The draft chapters identified by the Commission contain the headings of the nomenclature as provisionally adopted. Legal notes, which have the same binding force as the headings and as the rules of interpretation of the nomenclature, are provided to define the scope of a heading or the meaning of terms, to list articles covered by a heading or group of headings, and to list excluded articles.

Explanatory Notes, which do not form a part of the nomenclature, contain the official interpretation of the nomenclature ultimately to be adopted by the Customs Cooperation Council. The notes are arranged in the scope of each heading, including the products included and excluded, technical product descriptions, a guide for product indentification, and the appearance, properties, uses, and methods of production of the products concerned. The public notice of February 16, 1982 (47 F.R. 8108) indentified chapters for which Explanatory Notes were available and requested public comment. The notice sought views on Explanatory Notes for Chapters 1 through 14, 16 through 19, 23, 24, 26, 31, 35 through 37, 41 through 43, and 46.

Drafts of the above Explanatory Notes are being finally reviewed by both the Harmonized System Committee and the Nomenclature Committee. As texts of further Explanatory Notes are adopted, the Commission will issue future notices requesting public comment.

By order of the Commission.

Issued: April 14, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN SILICA-COATED LEAD CHROMATE PIGMENTS } Investigation No. 337-TA-120

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 18, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of E. I. du Pont de Nemours and Co., 1007 Market Street, Wilmington, Delaware 19898. An amendment to the complaint was filed on March 31, 1982. The amended complaint (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the

importation of certain silica-coated lead chromate pigments into the United States, or in their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 3,639,133. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue an order excluding said pigments from entry into the United States for the life of the patent in issue.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on April 14, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain silica-coated lead chromate pigments into the United States, or in their sale, by reason of alleged direct infringement of the claims of U.S. Letters Patent 3,639,133, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

E. I. du Pont de Nemours and Co.
1007 Market Street
Wilmington, Delaware 19898

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is be served:

Toho Ganryo Kogyo KK
No. 36–5, 3-Chome, Sakashita
Itabashi-ku
Tokyo, Japan 174

Japan Cotton Co.
630 Houston Natural Gas Building
Houston, Texas 77002

Synergistic Pigments of Massachusetts, Inc.
765 Quequechan Street
Fall River, Massachusetts 02722

C. Withington Co., Inc.
16 Pelham Parkway
Pelham Manor, New York 10803

(c) Oreste Russ Pirfo, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, D.C. 20436, shall be the Commission Investigative Attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Oreste Russ Pirfo, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

By order of the Commission.

Issued: April 14, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN COIN-OPERATED AUDIOVISUAL GAMES AND COMPONENTS THEREOF (VIZ RALLY-X AND PAC MAN)	Investigation No. 337-TA-105

Commission Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337-TA-105, Certain Coin-Operated Audiovisual Games and Components Thereof (viz Rally-X and Pac Man).

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the unauthorized importation into the United States and sale of certain coin-operated audiovisual games and components thereof that are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202-523-0161.

COMMISSION HEARING: The Commission will hold a public hearing on May 24, 1982, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties.

ORAL ARGUMENTS: Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to

oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in this order: complainant, respondents, Government agencies, the Commission investigative attorney, public-interest groups, and interested members of the public.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents' being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATION: Parties and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or proposed cease and desist orders for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on April 29, 1982; written submissions on the questions of remedy, bonding, and the public interest must be filed not later than the close of business on May 6, 1982. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by May 17, 1982.

ADDITIONAL INFORMATION: The original and 14 true copies of all briefs on violation must be filed with the Office of the Secretary not later than April 29, 1982; the original copy and 14 true copies of all briefs on remedy, bonding, and the public interest must be filed with the Office of the Secretary not later than May 6, 1982. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of July 1, 1981, 46 F.R. 34436.

FOR FURTHER INFORMATION CONTACT: Scott M. Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0074.

By order of the Commission.

Issued: April 14, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN MULTI-SEQUENTIAL CODED RADIO PAGERS } Investigation No. 337-TA-109

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation based on settlement agreement.

SUMMARY: On January 8, 1982, all parties to *Certain Multi-Sequential Coded Radio Pagers,* inv. No. 337-TA-109, filed a joint motion to terminate the investigation based on a settlement agreement entered into as of January 18, 1982, by complainant Motorola, Inc., of Schaumburg, Ill. (Motorola) and respondent Nippon Electric Co., Ltd., of Tokyo, Japan (NEC Japan). The Commission published notice containing a summary of the proposed settlement agreement in the *Federal Register* on February 24, 1982, and requested comments from the public. No comments adverse to termination were received. Having reviewed the record in this investigation, the Commission has voted to grant the parties' joint motion to terminate (Motion 109-2) and is ordering the termination of investigation No. 337-TA-109, *Certain Multi-Sequential Coded Radio Pagers.*

SUPPLEMENTARY INFORMATION: Notice of the institution of this investigation was published in the *Federal Register* on October 28, 1981 (46 F.R. 54658). Copies of the Commission's Action and Order and any other public documents in this investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0161. The settlement agreement entered into by the parties contains confidential business information subject to a protective order and is not available for public examination.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commis-

sion, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-1627.

By order of the Commission.

Issued: April 13, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN METHODS FOR EXTRUDING PLASTIC TUBING } Investigation No. 337-TA-110

Notice of Termination of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Logo-Paris, Inc.

SUMMARY: The Commission has terminated the above-captioned investigation as to respondent Logo-Paris, Inc. (Logo-Paris) on the basis of a motion filed by Logo-Paris. The complainant has not opposed the motion. The Commission investigative attorney does not oppose it.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 and section 337a of the Tariff Act of 1930 (19 U.S.C. § 1337 and § 1337a and concerns alleged unfair trade practices in the importation into and sale in the United States of certain plastic bags allegedly made abroad in accordance with the claims of a method patent owned by the complainant in this proceeding, Minigrip, Inc. The motion to terminate the investigation as to Logo-Paris included an affidavit by Claude LePage, the president of Logo-Paris. In the affidavit, Mr. LePage states that the plastic bags Logo-Paris sought to import were to be used as packaging for eyeglass frames which it manufactures and sells, but that importation was blocked by the U.S. Customs Service pursuant to the exclusion order issued by the Commission at the Conclusion of investigation No. 337-TA-22.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection which this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, telephone 202-523-0079.

By order of the Commission.

Issued: April 13, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-46 (Final)

CERTAIN STEEL WIRE NAILS FROM KOREA

AGENCY: U.S. International Trade Commission.

ACTION: Notice of rescheduling of prehearing conference and hearing.

SUMMARY: The U.S. International Trade Commission announces the rescheduling of the prehearing conference and the hearing on certain steel wire nails from Korea. The prehearing conference to be held in connection with the subject investigation is now scheduled to begin at 9:30 a.m., on June 4, 1982 and the hearing at 10:00 a.m., on June 24, 1982, in the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck, Office of Investigations, Room 350 U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone (202-523-0339).

SUPPLEMENTARY INFORMATION: On January 29, 1982, the Commission instituted a final antidumping investigation on certain steel wire nails from Korea and scheduled a prehearing conference and a hearing in connection with the investigation for March 31, and April 21, 1982, respectively (47 F.R. 7349). On March 30, 1982, however, the U.S. Department of Commerce announced an extension of the investigation for up to 60 days and will now make its final less-than-fair value determination not later than June 18, 1982. Accordingly, the Commission is rescheduling its prehearing conference for June 4, 1982, and its hearing for June 24, 1982. The Commission must make its final determination within 45 days after the final Commerce action or in this case by August 2, 1982.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 2, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend the prehearing conference at 9:30 a.m., on June 4, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements should be filed on or before June 21, 1982.

A staff report containing preliminary findings of facts will be made available to all interested parties on June 4, 1982.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23).

This rule requires that testimony be limited to a non-confidential summary and analysis of material contained in prehearing statements and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with rule 207.22. Posthearing briefs will also be accepted within a time specified at the hearing.

WRITTEN SUBMISSIONS: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. 20436, on or before June 21, 1982. All written submissions, except for confidential business data, will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 47 F.R. 6190).

By order of the Commission.

Issued: April 9, 1982.

KENNETH R. MASON,
Secretary.

Index

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